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6 Attorneys for Plaintiff
7 PACIFIC COAST BUILDING PRODUCTS, INC.

8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 PACIFIC COAST BUILDING PRODUCTS,) CASE NO.: C 05-04976 PJH
13 INC., a California corporation,)
14 Plaintiff,) STIPULATION AND ORDER
15 v.) DISMISSING WITHOUT
16 AIU INSURANCE COMPANY, a New York) PREJUDICE THE THIRD CAUSE OF
17 corporation, et al.,) ACTION IN PACIFIC COAST'S
18 Defendants.) SECOND AMENDED COMPLAINT

19
20 **STIPULATION:** The undersigned counsel for plaintiff Pacific Coast Building Products, Inc.
21 ("Pacific Coast") and defendant AIU Insurance Company ("AIU) stipulate as follows.

22 On October 31, 2006, the Court issued an order granting AIU's motion for partial summary
23 judgment and denying Pacific Coast's motion for partial summary judgment. The Court granted AIU's
24 motion, which sought summary judgment in favor of AIU as to the First and Second Causes of Action
25 (both for breach of insurance contract) asserted in Pacific Coast's Second Amended Complaint. As a
26 result of the Court's order Pacific Coast cannot proceed and/or prevail on its Third Cause of Action --
27 for breach of the implied covenant of good faith and fair dealing, which is predicated on a breach of the
28 insurance contract -- unless and until the Court's order is reversed on appeal. Thus, there is no practical

1 reason for Pacific Coast to continue to pursue the Third Cause of Action at this time.

2 Therefore, Pacific Coast and AIU stipulate that the Third Cause of Action may be dismissed
3 without prejudice.

4 DATED: December 11, 2006

PILLSBURY & LEVINSON, LLP

5 By _____
6

7 Richard D. Shively
8 Attorneys for Plaintiff
PACIFIC COAST BUILDING PRODUCTS, INC.
9

10 DATED: December ___, 2006

MCCURDY & FULLER LLP

11 By _____
12

13 Kevin G. McCurdy
14 Attorneys for Defendant
AIU INSURANCE COMPANY
15

16 **ORDER:** For the reasons set forth in the parties' stipulation above, the Court orders that the Third
17 Cause of Action in Pacific Coast's Second Amended Complaint is hereby dismissed without prejudice.
18

19 DATED: December ___, 2006

20 _____
21 The Honorable Phyllis J. Hamilton
22 UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
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28

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2 Therefore, Pacific Coast and AIU stipulate that the Third Cause of Action may be dismissed
3 without prejudice.

4 DATED: December , 2006

PILLSBURY & LEVINSON, LLP

5 By _____

6 Richard D. Shively
7 Attorneys for Plaintiff
8 PACIFIC COAST BUILDING PRODUCTS, INC.

9 DATED: December 9, 2006

10 MCCURDY & FULLER LLP

11 By _____

12 Kevin G. McCurdy
13 Attorneys for Defendant
14 AIU INSURANCE COMPANY

15 **ORDER:** For the reasons set forth in the parties' stipulation above, the Court orders that the Third
16 Cause of Action in Pacific Coast's Second Amended Complaint is hereby dismissed without prejudice.

17 DATED: December 13, 2006

